

VU Research Portal

Regulating the Information Society: The Reproduction Right in European Copyright Law

Scholtens, H.N.

published in

When Private Actors Contribute to Public Interests. A Law and Governance Perspective
2014

document version

Publisher's PDF, also known as Version of record

[Link to publication in VU Research Portal](#)

citation for published version (APA)

Scholtens, H. N. (2014). Regulating the Information Society: The Reproduction Right in European Copyright Law. In A. McCann, A. E. van Rooij, A. Hallo de Wolf, & A. R. Neerhof (Eds.), *When Private Actors Contribute to Public Interests. A Law and Governance Perspective* (pp. 201-219). Eleven International Publishing.

General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal ?

Take down policy

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

E-mail address:

vuresearchportal.ub@vu.nl

Regulating the Information Society

THE REPRODUCTION RIGHT IN EUROPEAN COPYRIGHT LAW

*Hein Scholtens**

Introduction

It has been almost thirteen years since the Copyright Directive was introduced into the European Union.¹ After a scholarly evaluation that took place at the start of 2012, it may now be considered opportune to further assess its contents.² Consequently, I have chosen to examine the copyright reproduction right as laid down in Article 2(a):

‘Member States shall provide for the exclusive right to authorize or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part: (a) for authors, of their works [...].’

My motivation is as follows: I believe that the reproduction right is inadequate for the proper regulation of the production of copyright works, or multimedia works, as referred to in the context of the information society which is the subject of the Copyright Directive (Paragraph 1). Alongside their potential to be copied onto various media, for instance music that can be played from the memory of a laptop or iPhone, one of the key features of multimedia works is their transformative nature. This means that they are likely to be based on previous works, to which may also be attached another meaning – as in the use of parody.

On the basis of the legal history of European copyright law and the content of international copyright law, I will argue that the reproduction right is not built to cope with the transformative aspect of multimedia works production (Section 2). Instead of interpreting this right broadly, which seems to be the approach chosen by the Court of Justice so as to fit the act of transformation within that of reproduction (Section 3), I suggest implementing an explicit adaptation right in the Copyright Directive (Section 4). Not only would this conform to the treaty

* H.N. (Hein) Scholtens is a PhD Candidate at VU University Amsterdam.

¹ European Parliament and Council Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (*OJ* 2001, L 167/10).

² Available at: <<http://kluwercopyrightblog.com/2011/12/21/the-infosoc-directive-ten-years-after/>>. Indeed the time is ripe for assessment of the directive; the Commission has also just launched a public consultation on the review of EU copyright rules, available at: <http://ec.europa.eu/internal_market/consultations/2013/copyright-rules/docs/consultation-document_en.pdf>.

obligations that follow from the Berne Convention, TRIPS Agreement and WIPO Copyright Treaty, it would also be in accordance with the European *acquis communautaire* consisting of the Software and Database Directives. Lastly, I consider whether the implementation of an adaptation right can be considered a valid means to come to grips with the development of the information society, and further consider the option of awarding financial compensation to authors whose works have been transformed, as the preservation of the resulting derivatives relies on these private actors' acceptance. In this regard, actors need not adopt an aggressive attitude. The example of versioning in reggae music shows that derivative and original works can coexist peacefully (Section 5). In conclusion, therefore, public copyright policy should be built on this positive co-existence.

1. Importance of Multimedia Works

In this section, I will focus on the role of copyright works during the rise of the information society in the late eighties and early nineties. Multimedia works, as they are referred to in this historical context, play an important part in the response to the changing technological circumstances. They can emancipate people both on the level of employment and personal development, enabling them to contribute to European economy and culture.

In the late 1980s, the European Commission set the tone for what was to become the core of its future legislative programme. In the 'Green Paper on Copyright and the Challenge of Technology – Copyright Issues Requiring Immediate Action',³ the Commission formulated the following spearheads: piracy, home copying, distribution and rental of works in general, and the protection of computer programmes and databases specifically. With the successive enactment of the Software, Rental Right, Satellite and Cable, Terms of Protection and Database Directives, most of the issues requiring immediate action were covered.⁴ It took until 1993, however, before the first steps were taken to tackle the remaining problem areas.

³ Commission Document 88/172 final, p. 15.

⁴ Council Directive 91/250/EEC of 14 May 1991 on the protection of computer programmes (*OJ* 1991, L 122/42) (later codified as European Parliament and Council Directive 09/24/EC of 23 April 2009 on the legal protection of computer programmes (*OJ* 2009, L 111/16)), Council Directive 92/100/EEC of 19 November 1992 on rental and lending right and on certain rights related to copyright in the field of intellectual property (*OJ* 1992, L 346/61), Council Directive 93/83/EEC of 27 September 1993 on the co-ordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (*OJ* 1993, L 248/15), Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights (*OJ* 1993, L 290/9) and European Parliament and Council Directive 96/9/EC of 11 March 1996 on the legal protection of databases (*OJ* 1996, L 077/20).

In the White Paper ‘Growth, Competitiveness, employment. The challenges and ways forward into the 21st century’, the Commission introduced the ‘information society’ as a development to which European copyright law must adapt. The information society is based on the idea that the presence of information and communication technology (ICT) influences all human activity.⁵ Considering that safeguarding the free movement of persons and services is one of the main goals to be achieved within the European Union (Articles 45-62 TFEU), the effects of the information society on the work environment were the most relevant.⁶

ICT has caused the character of the economy to shift from the manufacturing of goods to the provision of services. In this knowledge economy, the exchange of information is becoming more important and the boundaries between supporting technologies are fading.⁷ These developments translate to the rate of employment in two ways: firstly, the convergence of supply chains provides possibilities for intermediaries; secondly, employees must learn to deal with the digital storage and conversion of information.⁸ ICT also has additional advantages in regard to the personal lives of employees. It offers individuals new channels to distribute their creative expressions.⁹ These ‘multimedia works’ are of an eclectic nature.¹⁰ They allow consumers to elaborate and make combinations that defy classic copyright categorization.

The character of multimedia works was recognized by the Commission in the Green Paper: ‘Copyright and Related Rights in the Information Society’.¹¹ The Commission viewed these qualities as cultural aspects that the European Union must take into account in its regulative action (Article 167(4) TFEU). This consists of the establishing and ensuring the functioning of the internal market (Article 26(1) TFEU), the safeguarding of the freedom of establishment

⁵ Commission Document 93/700, pp. 92, 93.

⁶ OJ 2012, C 326/47; See for an assessment of the rules on all four freedoms: C. Barnard, *The Substantive Law of the EU. The Four Freedoms*, Oxford University Press, Oxford, 2010.

⁷ Commission Document 93/700, pp. 10, 39, 61.

⁸ Commission Document 93/700, pp. 94-98.

⁹ European Commission, *Growth, competitiveness and employment. White Paper follow-up. Report on Europe and the global information society. Interim report on trans-European networks. Progress report on employment. Extracts of the conclusions of the Presidency of the Corfu European Council*, Office for Official Publications of the European Communities, Luxembourg, 1994, pp. 10-15.

¹⁰ P.B. Hugenholtz, *Intellectual Property Rights on the Information Superhighway. Report to the Commission of the European Communities (DG XV). Draft version*, IViR, Amsterdam, 1994, Para. 1.2. While this does not detract from the eclecticism of the works, it must be admitted that their connection with a range of distribution channels is based on multimedia in the literal sense; however, ‘[t]he main distinctive characteristic of multimedia is that its technology is meant to combine, in a single medium, diverse types of works or information’: I.A. Stamatoudi, *Copyright and Multimedia Products. A Comparative Analysis*, Cambridge University Press, Cambridge, 2002, p. 18.

¹¹ Commission Document 95/382 final, pp. 11, 19, 25, 27, 28.

(Articles 49-55 TFEU), the provision of services (Articles 56-62 TFEU), and to a lesser extent the safeguarding of the free movement of goods (Articles 28-37 TFEU), as multimedia works are more likely to be transferred in an immaterial, electronic form.¹² The view of the Commission was confirmed by the European Parliament.¹³ On the other side of the coin, and in addition to the acknowledgement of consumer interests, right holders must be guaranteed a high level of copyright protection. Therefore, a balance was sought between the easy transmission and modification of multimedia works, and the difficulty to acquire permission for such actions.¹⁴

Furthermore, the balance to be achieved in the Copyright Directive had to be in accordance with international law as per the Berne Convention, TRIPS Agreement and WIPO Copyright Treaty, and the other directives mentioned earlier.¹⁵ Of these, the Software and Database Directives are the most relevant. The Software and Database Directives are relevant due to the fact that the interpretation of the reproduction right, as contained within the Copyright Directive, must follow their approach.¹⁶ The Database Directive is also important because it is foreseen that multimedia works will be accessed from these collections (Article 1(2) Database Directive).¹⁷ The other copyright directives: the Rental Right, Satellite and Cable and Terms of Protection Directives, need not be consulted; they do not contain reproduction rights and are therefore excluded from the relevant part of the *acquis communautaire*.¹⁸

After re-tracing the origins of the information society, it can be concluded that the versatility of multimedia works is an important factor in work and personal life. Against the background of the protection of the four freedoms, works must be protected by copyright. The copyright protection that is provided for in the Copyright Directive must not deviate from Treaty standards and the *acquis communautaire*, in order to maintain a high level that also accounts for cultural interests. In the following paragraph, the consequences of this approach for the content of the reproduction right are illustrated (re: Article 2(a) Copyright Directive).

¹² Commission Document 95/382 final, pp. 16, 30, 31.

¹³ *OJ* 1996, C 320/177.

¹⁴ European Commission, *supra* n. 14, pp. 21, 22. Currently this search is becoming more and more interesting, as creative speech arguments gain weight against copyright enforcement: *Ashby Donald v France*, ECHR (2013), No. 36769/08; D. Voorhoof & I. Høedt-Rasmussen, 'ECHR: Copyright vs. Freedom of Expression', available at: kluwercopyrightblog.com/2013/01/25/echr-copyright-vs-freedom-of-expression/.

¹⁵ See *cit. op. supra* n. 4; Commission Document 95/382 final, pp. 16, 30, 31.

¹⁶ Commission Document 95/382 final, pp. 51, 52; Commission Document 96/586 final, p. 10.

¹⁷ Commission Document 95/382 final, p. 31.

¹⁸ Commission Document 96/586 final, pp. 11; Commission Document 97/628 final, pp. 24, 28; P. Craig & G. de Búrca, *EU Law. Text, Cases, and Materials*, Oxford University Press, Oxford, 2008, p. 16.

2. Content of the Reproduction Right

In this section, I will compare reproduction rights as they are included in international and European copyright law. For this comparison, I turn to the Berne Convention, TRIPS Agreement, WIPO Copyright Treaty and the Software and Database Directives. I will show that all sources combined portray a cohesive image of what reproduction means. This definition, however, only partially applies to the multimedia works the right is supposed to regulate in accordance with the Copyright Directive. I find that reproduction rights do not address the pivotal aspect of re-use when their international and European contexts are considered.

To begin with the international context; in the Berne Convention (1971), which refers to the Paris Act – the last revised version of the treaty, the reproduction right is included in Article 9(1)(3).¹⁹ Paragraph 2 holds the three-step test, which I have excluded underneath as it applies to exceptions and limitations to the reproduction right, but does not define the act itself:

‘Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

Any sound or visual recording shall be considered as a reproduction for the purposes of this Convention.’²⁰

The inclusion of the reproduction right had already been achieved during a previous revision conference, namely that of Stockholm.²¹ At this meeting, the participating member states debated on overall copyright reform in general, and the broadening of exclusive rights or the granting of new ones in particular.²² In line with these topics, the reproduction right was introduced as a general rule overseeing the making of copies of works (Paragraph 1).²³ Adoption of this rule was of such importance that without agreement, the Stockholm Conference would have to be considered a failure.²⁴ Thankfully, unanimity was achieved by the attending Committee.²⁵ Accordingly, the third paragraph was added.²⁶ This

¹⁹ WIPO, *Records of the Diplomatic Conference for the Revision of the Berne Convention (Paris, July 5 to 24, 1971)*, WIPO, Geneva, 1974, p. 183.

²⁰ See for an assessment of the three-step test: M. Senftleben, *Copyright, Limitations and the Three-Step Test. An Analysis of the Three-Step Test in International and EC Copyright Law*, Kluwer Law International, The Hague, 2004.

²¹ WIPO, *Records of the Intellectual Property Conference of Stockholm, June 11 to July 14, 1967*, WIPO, Geneva, 1971, p. 1294.

²² *Ibid.*, p. 80.

²³ *Ibid.*, p. 21, pp. 81, 82, 111, 114; WIPO, *Guide to the Berne Convention for the Protection of Literary and Artistic Works (Paris act, 1971)*, WIPO, Geneva, 1978, p. 54.

²⁴ WIPO, *supra* n. 21, pp. 111, 113.

²⁵ WIPO, *supra* n. 21, p. 856.

confirms that not only the recording of sound, which previously was treated individually (Article 13(1)(i) Berne Convention (1948)), but also the recording of film, which is still the subject of a superfluous, specific right (Article 14(1)(i) Berne Convention (1971)), constitutes a form of reproduction.²⁷

Despite consensus on the core meaning of reproduction, deviating amendments had been submitted, but only on the outskirts of the right. Along with the reference to different manners or forms, it was proposed that the meaning of reproduction also refers specifically to the reproduction of parts of works (United Kingdom), any reproduction purpose (France) and certain reproduction methods that allow indirect communication to the public (Austria), such as the recording of a song to tape from which it can be played for an audience.²⁸ All amendments were however withdrawn: the British and French for the reason that their proposals had already implied elements of the right of reproduction, and the Austrian proposal for the reason that the inclusion of an enumeration was considered too elaborate, and the reliance on indirect communication too limited since the condition would narrow the scope of the reproduction right and thus make it less sensible to media that serve another purpose.²⁹ The kind of carrier should however not make a difference.³⁰ The common denominator of what constitutes reproduction (Article 9(1)(3) Berne Convention (1971)) is therefore the making of copies of a work, regardless of the circumstances under which the right is enforced.

The other parts of international copyright law, the TRIPS Agreement and WIPO Copyright Treaty, join Article 9(1)(3) Berne Convention (1971) via connections in Article 9(1) respectively 1(3)(4). These establish that members, such as the European Union, which is party to the WIPO Copyright Treaty, shall comply with Articles 1 to 21 and the Appendix of the Berne Convention (1971). Only in the context of the TRIPS Agreement, an exception is made with regard to moral rights (Article 6*bis* Berne Convention (1971)). Amongst other actions, these provide a measure of protection against unlawful modification of works.³¹ Accordingly, moral rights must still be protected within the European Union. In

²⁶ WIPO, *supra* n. 21, p. 927.

²⁷ Union internationale pour la protection des oeuvres littéraires et artistiques, *Documents de la Conférence réunie à Bruxelles du 5 au 26 juin 1948*, Bureau de l'Union internationale pour la protection des oeuvres littéraires et artistiques, Bern, 1951, p. 541; S. Ricketson & J.C. Ginsburg, *International Copyright and Neighbouring Rights. The Berne Convention and Beyond*, Oxford University Press, Oxford, 2006, pp. 642, 643.

²⁸ WIPO, *supra* n. 21, pp. 611, 630, 683, 687, 690, 856.

²⁹ WIPO, *supra* n. 21, pp. 852, 853, 856; Ricketson & Ginsburg, *supra* n. 27, p. 644.

³⁰ T. Dreier & P.B. Hugenholtz (Eds.), *Concise European Copyright Law*, Kluwer Law International, Alphen aan den Rijn, 2006, p. 41.

³¹ Generally see: E. Adeney, *The Moral Rights of Authors and Performers. An International and Comparative Analysis*, Oxford University Press, Oxford, 2006.

addition, member states are not relieved of the task of continuing to fulfil other obligations and strictly formulated rules that derive from previous Acts of the Berne Convention (Article 2(2) TRIPS Agreement in conjunction with Article 1(2) WIPO Copyright Treaty).³²

In respect of the other obligation, namely the protection of the reproduction right, an agreed statement was issued concerning Article 1(4) WIPO Copyright Treaty. This provided that Article 9(1)(3) Berne Convention (1971) fully applies in the digital environment, in particular to the use of works in digital form such as the storage in an electronic medium. Although this observation could already be made on the basis of the fact that, apart from the realization of a copy, the reproduction right does not impose time or other limitations, no unanimity could be achieved on the treatment of the electronic storage of works. The agreed statement is therefore said to reflect both the view that this should be placed outside the scope of the reproduction right, and the view that electronic storage should be included.³³ For reasons of continuity, I give preference to the latter, and more traditional view.³⁴

As is preferred with regard to the WIPO Copyright Treaty, a broad scope of the reproduction right is also one of the principles underlying the Software and Database Directives. Both directives aim at providing effective protection against unlawful reproduction and adaptation of computer programmes and collections of data.³⁵ These programmes and collections are treated as works in terms of Article 2 Berne Convention (1971), and as a result the connection with international copyright law is established (Article 1(1) Software Directive).³⁶

In the above section, I introduced the term ‘adaptation’. Adaptation, or the arrangement or other alteration of a copyright work, is regulated by Article 12 Berne Convention (1971). Although in this paper I will only briefly touch upon its ambiguous meaning in the fourth section, it is important to indicate that

³² J. Busche & P. Stoll (Eds.), *TRIPS. Internationales und europäisches Recht des geistigen Eigentums. Kommentar*, Heymanns, Cologne, 2007, pp. 145, 146; J. Reinbothe & S. von Lewinski, *The WIPO treaties 1996. The WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Commentary and Legal Analysis*, Tottel, Haywards Heath, 2007, p. 35; Dreier & Hugenholtz, *supra* n. 30, p. 90.

³³ Dreier & Hugenholtz, *supra* n. 30, p. 91, 92; WIPO, *WIPO Intellectual Property Handbook. Policy, Law and Use*, WIPO, Geneva, 2004, p. 271.

³⁴ Reinbothe & Von Lewinski, *supra* n. 32, p. 45; M. Ficsor, *The Law of Copyright and the Internet. The 1996 WIPO Treaties, Their Interpretation and Implementation*, Oxford University Press, Oxford, 2002, p. 450.

³⁵ Commission Document 88/816 final, pp. 5, 7, 16; consideration 7, 38 Database Directive.

³⁶ Commission Document 93/464 final, p. 3.

adaptation can be described as the ‘remodelling of a work into another form’, for instance turning a book into a play or parodying its main characters.³⁷

The reproduction right, which means the copying of a work, has been implemented in a way similar to Article 9(1) Berne Convention (1971). Article 4(a) Software Directive and Article 5(a) Database Directive both include a reference to any reproduction manner or form. The directives however combine this with references to temporary and partial reproduction, and Article 4(a) Software Directive also with an enumeration of reproduction methods.

Considering the way computer programmes and databases are treated, these Articles do not demonstrate historical understanding, as the reproduction right need not be defined in great detail.³⁸ Arguably, it would have been preferable to exclude extra references e.g. the reference to any purpose, which was deleted from Article 4(a) Software Directive.³⁹ On the other hand, the software and database reproduction rights can be considered as the forerunners of the discussion on the treatment of electronic storage of works under the WIPO Copyright Treaty. In this context, they also reflect the opinion that electronic storage should be included, after which the reproduction that is necessary for the lawful use of software and databases is exempted from the authorization of the right holder (Article 5(1)(2) Software Directive in conjunction with Article 6(1) Database Directive).⁴⁰

Thus far, European copyright law has shown an overlap with its international counterparts. Article 9(1)(3) Berne Convention (1971) sets a broad standard. As both systems of law however developed further, it became more difficult to bear in mind the traditional meaning of reproduction: the making of copies. This needs no further explanation to enable it to continue to be of value in the future.

With the realization of multimedia works, electronic storage is not however the only relevant aspect. The works are equally characterized by elaboration of following authors. Moral rights and the right of adaptation seem better equipped to regulate this feature. The following section illustrates how the directive that was specifically written to counter the challenges of the information society, the Copyright Directive, deals with transformative use.

³⁷ Ricketson & Ginsburg, *supra* n. 27, p. 652; A. Ramalho, ‘Parody in Trademarks and Copyright: Has Humour Gone too Far?’, *Cambridge Student Law Review*, Vol. 5, No. 1, 2009, pp. 59, 60. Actually, a case in which the comic book characters Spike and Suzy were parodied, is currently pending with the Court of Justice; *OJ* 2013, C 189/6. On the basis of the decision, the description of adaptation and the correctness of the example can probably be verified.

³⁸ See *cit. op. supra* n. 29.

³⁹ *OJ* 1990, C 320/22.

⁴⁰ See *cit. op. supra* n. 34.

3. Application of the Reproduction Right

In this section, the reproduction right as set out in Article 2(a) Copyright Directive will be reintroduced. It will further be demonstrated that it was designed to be a continuation of the previous rights, but that it has been interpreted to also encompass the adaptation right.

On a primary evaluation of the structure in which the Copyright Directive is embedded (Section 1), it can be seen that important elements are mentioned in the preamble: employment and the supply of services within the internal market (fourth consideration); expansion of the *acquis* to stimulate the demand for new services and multimedia works (second and seventh consideration); notion of the cultural aspects of works (eight and twelfth consideration); strong protection on the level of the WIPO Copyright Treaty (ninth and fifteenth consideration); and a broad definition of the acts covered by the reproduction right (twenty-first consideration), which includes temporary reproduction (thirty-third consideration).

These elements result in the following reproduction right (Article 2(a) Copyright Directive):

‘Member States shall provide for the exclusive right to authorize or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part: (a) for authors, of their works [...]’

According to the Explanatory Memorandum: ‘the provision sets out a broad, comprehensive definition of the reproduction right covering all relevant acts of reproduction, whether on-line or off-line, in material or immaterial form.’⁴¹ Again, the aim of this provision could have been better achieved by a streamlined, concise formulation.⁴² During the deliberations in the Council and European Parliament however, hardly any time was devoted to the reproduction right, apart from lengthy discussions on the exception for temporary reproductions (Article 5(1) Copyright Directive).⁴³ Throughout these discussions, the debate that started while negotiating the WIPO Copyright Treaty was continued.⁴⁴ Contrastingly, consensus on the wording of Article 2(a) Copyright Directive was reached quickly. The only amendment, the deletion of the phrase ‘of the original and copies [of their works]’, was adopted at an early stage.⁴⁵ The

⁴¹ Commission Document 97/628 final, p. 24.

⁴² See *cit. op. supra* n. 29.

⁴³ See for an overview: Council Report 00/7179, pp. 3, 4; Council Report 00/8647, pp. 4, 5.

⁴⁴ See *cit. op. supra* n. 33.

⁴⁵ *OJ* 1999, C 180/6; Council Report 99/12913, p. 2.

reason for this amendment seems to be that in a digital environment it is difficult to distinguish between the originals and copies of works, for instance on the basis of quality.⁴⁶

The difficulty in distinguishing between the reproduction and adaptation right took time to become apparent as it took nearly a decade after the Copyright Directive was adopted (2001) for Article 2(a) to be interpreted. In its *Infopaq* judgment of 16 July 2009, the Court of Justice decided on the reproduction of newspaper snippets with the interference of a search engine.⁴⁷ It declared that, as in the case of the Software, Terms of Protection and Database Directives, these snippets must reflect the originality of the whole articles in order to be protected.⁴⁸ Given the importance of the supporting legal framework, this analogy is correct.⁴⁹ In cases following *Infopaq*, the protection threshold was further developed, up to the point where the choices underlying the parts used show the author's original creativity.⁵⁰ It was also in one of these cases, the *Painer* judgment, that expanding the scope of the reproduction right was first suggested.

In her Opinion, Advocate General Trstenjak considered the issue of whether copyright works are protected against unlawful adaptation.⁵¹ She concluded: 'the notion of reproduction in Article 2 of Directive 2001/29 is a combination of the notions of reproduction in the preceding directives'.⁵² I fully agree with this conclusion.⁵³ I do not, however, agree with her other assertion that the broad

⁴⁶ Committee on Legal Affairs and Citizens' Rights Report 99/225.907 final, pp. 33, 70.

⁴⁷ Judgment of 16 July 2009 in *Case 5/08, Infopaq International A/S v Danske Dagblades Forening (Infopaq)* [2009] ECR I-6569, Paras. 25, 26. The snippets were reproduced through a 'data capture process' that involved scanning, saving and printing. In the follow-up case *Infopaq II*, the Court decided that only the first two actions met the criteria of the exception for temporary reproductions (Judgment of 17 January 2012 in *Case 302/10, Infopaq International A/S v Danske Dagblades Forening (Infopaq II)* [2012] I-0000, Para. 36).

⁴⁸ *Case 5/08, Infopaq*, in particular Paras. 35, 38 of the Judgment. This standard fails, however, to take into account that parts of works can also be original in their own right: E. Rosati, 'Originality in a Work, or a Work of Originality: The Effects of the Infopaq Decision', *EIPR*, Vol. 33, No. 12, 2011, p. 749.

⁴⁹ See *cit. op. supra* n. 15.

⁵⁰ Judgment of 22 December 2010 in *Case 393/09, Bezpečnostní softwarová asociace – Svaz softwarové ochrany v Ministerstvo kultury (Softwarová)* [2010] ECR I-13971, Para. 48; Judgment of 4 October 2011 in *Case 403/08, Football Association Premier League Ltd. et al. v QC Leisure et al. (Premier League)* [2011] ECR I-0000, Paras. 155, 156; Judgment of 1 December 2011 in *Case 145/10, Eva Maria Painer v Standard VerlagsGMBH et al. (Painer)* [2011] ECR I-0000, Paras. 88, 89; Judgment of 1 March 2012 in *Case 604/10, Football Dataco Ltd. et al. v Yahoo! UK Ltd. et al. (Football Dataco)* [2012] ECR I-0000, Paras. 38, 39; Judgment of 2 May 2012 in *Case 406/10, SAS Institute Inc v World Programming Ltd. (SAS Institute)* [2012] ECR I-0000, Para. 67.

⁵¹ Advocate General in *Case 145/10, Painer* [2011] ECR I-0000, Paras. 106, 107, 118.

⁵² J. Reinbothe, 'Die EG-Richtlinie zum Urheberrecht in der Informationsgesellschaft', *GRUR Int.*, 2001, pp. 733-745; S. von Lewinsky, 'Der EG-Richtlinienvorschlag zum Urheberrecht und zu verwandten Schutzrechten in der Informationsgesellschaft', *GRUR Int.*, 1998, pp. 637-642.

⁵³ See *cit. op. supra* n. 16.

wording and broad definition of acts that are within the reach of the reproduction right suggest that this should also cover the making of adaptations.⁵⁴ Although there have always been different approaches to the treatment of adaptations, either as a part of the reproduction right or as objects of an individual right, and these still effect the interpretation of Berne Convention (1971) Articles 8 (right of translation), 12 (right of adaptation) and 14(1)(i) (right of cinematographic adaptation), it is my view that they have not influenced the coming about of Article 9(1)(3) Berne Convention (1971).⁵⁵ In truth, the Advocate General's understanding of the resulting Article 2(a) Copyright Directive may be a good example of the confusion that the member states tried to avoid when deleting the reference to parts of works from the international reproduction right. This would invoke a narrow interpretation of the other exclusive rights, which do not contain such a phrase.⁵⁶ By emphasizing that Article 2(a) Copyright Directive 'expressly also covers publications in a modified form', she adds a meaning different from the making of material or immaterial copies.⁵⁷ The reference to reproduction in any form means that it does not matter whether the copy is made onto the same or a different sort of medium, for example making a mere technical photograph of a work of architecture.⁵⁸ Thus the reproduction right relates less to the protection of copy-right works, and more to their exploitation.⁵⁹

This view also better corresponds with the presence of adaptation rights in the Software and Database Directives (Article 4(b) Software Directive in conjunction with Article 5b Database Directive). Although in this paper I do not intend to make definite statements on the content of these rights, remodelling the form of a work that is the author's own intellectual creation (Article 1(3)

⁵⁴ Advocate General in *Case 145/10, Painer* [2011] ECR I-0000, Paras. 126, 127.

⁵⁵ See Ricketson & Ginsburg, *supra* n. 27, pp. 623, 634, 647, 654, 655; see *cit. op. supra* n. 25. Regarding the interpretation of Article 12 Berne Convention (1971), it seems to me that the translation and cinematographic adaptation rights, should be treated as its *leges speciales*: H. Scholtens, 'Het maken van bewerkingen in het auteursrecht: een alledaagse bezigheid waarbij in Europa niet is stilgestaan', in M. Cupido *et al.* (Eds.), *Europa: bedreiging of kans?*, Boom Juridische uitgevers, The Hague, 2013, p. 41.

⁵⁶ WIPO, *supra* n. 21, p. 852.

⁵⁷ If this meaning was intended originally, it should have been made clear somewhere in the directive: D.J.G. Visser, 'Aanleiding voor de veronderstelling dat zulks naar Europees recht anders zou zijn, is er niet', available at: <http://www.boek9.nl/files/2013B9/Boek9.nl_-_B9_12245_-_Dirk_Visser_Hoge_Raad_had_prejudiciële_vragen_moeten_stellen_over_het_auteursrecht.pdf>.

⁵⁸ A.R. Lodder & H.W.K. Kaspersen (Eds.), *eDirectives. Guide to European Union Law on E-commerce. Commentary on the Directives on Distance Selling, Electronic Signatures, Electronic Commerce, Copyright in the Information Society, and Data Protection*, Kluwer Law International, The Hague, 2002, p. 100.

⁵⁹ Advocate General in *Case 145/10, Painer* [2011] ECR I-0000, Para. 128; J.H. Spoor, 'Copies in Continental Copyright', in *Copies in Copyright*, Sijthoff & Noordhoff, Alphen aan den Rijn, 1980, p. 55.

Software Directive in conjunction with Article 3(1) Database Directive) seems more likely to be regulated by the specific adaptation rights.⁶⁰ In this regard, exercise of the adaptation right directly influences the creative content of the message that is protected by copyright law, whereas the reproduction right only addresses the literal way in which this is conveyed.⁶¹ The rights therefore express the traditional distinction between *corpus mysticum* and *corpus mechanicum*.⁶²

Following from the different *corpora* and the broad wording of Article 2(a) Copyright Directive, the broad definition of the acts that are within the reach of the reproduction right still needs to be scrutinised. The Advocate General asserts that this definition suggests that the making of adaptations should also be covered.⁶³ In my view, this connection does not appear to be plausible, as it must be fixed in conformity with the *acquis communautaire* and to ensure legal certainty within the internal market (twenty-first consideration, Copyright Directive). When reviewing the legal history of the Copyright Directive, the outer bounds of the reproduction right have always been explored with regard to the different conditions under which copies can be made, most notably those for only a limited period of time.⁶⁴ If Article 2 should now also be interpreted broadly in the direction of acts of adaptation, this would constitute a breach of custom and lead to legal uncertainty.

Prudently, the advice of Advocate General Trstenjak was not followed by the Court of Justice, at least not in the *Painer* case.⁶⁵ The *SAS Institute* Judgment seems however to confirm her approach. In this case, the Court ruled on a dispute between two software developers. Amongst other things, the party World Programming Ltd. had allegedly copied and adapted the user manuals of its competitor SAS Institute Inc.⁶⁶ When referring to this claim, the Court of Justice observed that it was to be determined, ‘whether Article 2(a) Copyright Directive stretches out to the reproduction in a computer program or its user manual, of another protected manual’s elements’.⁶⁷ This question must be

⁶⁰ See *cit. op. supra* n. 37.

⁶¹ J. Spoor, ‘*Verveelvoudigen: Reproduction and Adaptation under the 1912 Copyright Act*’, in B. Hugenholtz, A. Quaadvlieg & D. Visser (Eds.), *A Century of Dutch Copyright Law. Auteurswet 1912-2012*, deLex, Amsterdam, 2012, p. 206.

⁶² J. Kohler, *Urheberrecht an Schriftwerken und Verlagsrecht*, Enke, Stuttgart, 1907, pp. 26-28.

⁶³ See *cit. op. supra* n. 54.

⁶⁴ See *cit. op. supra* n. 43.

⁶⁵ *Case 145/10, Painer* in particular Para. 99 of the judgment. By stating that I find this decision sensible, I do not mean to convey that I am opposed to harmonization of the adaptation right. Only do mean to indicate, that the arguments put forward do not support this objective.

⁶⁶ *Case 406/10, SAS Institute* in particular Para. 27 of the judgment.

⁶⁷ *Case 406/10, SAS Institute* in particular Para. 63 of the judgment.

answered in the affirmative, as long as the elements express the intellectual creation of the author.⁶⁸

The partial expression of the author's intellectual creation corresponds with the copying, in the sense of borrowing, of the original features of his work.⁶⁹ This is, for instance, the Dutch standard used to assess whether adaptation has occurred. In the Netherlands therefore the overlap has been recognized, at least by some commentators.⁷⁰ It may be that they have exaggerated the weight of the 'reproduction in' formula, or others have underestimated this. Either way, it is my view that the formula deserves further (international) investigation. From a perspective of national autonomy, it is important to ascertain if the ruling in *SAS Institute* is experienced more widely as limiting the freedom of EU member states to hold on to their own adaptation rights.

Within the European Union, the reproduction right was included in Article 2(a) Copyright Directive to retain the connection with the preceding copyright treaties. Since the Opinion in *Painer* and arguably the Judgment in *SAS Institute*, however, its meaning has evolved and moved away from the making of copies of works. Inspired by the goal of attaining comprehensiveness, individual words have been taken out of their original context to embrace the making of adaptations. In this pursuit, the presence of specific rights in other directives, the legal history of the Copyright Directive, and fundamental ideas have been neglected. This should not go unnoticed. Scholarship will need to devote more time to investigate the possible expansion of the reproduction right and the effects thereof. Meanwhile, in the following paragraph, I will argue that is better to include in the Copyright Directive an explicit adaptation right. Thereafter I will show that this opportunity was not seized.

4. Explicit Adaptation Right

In this section, I argue that the European Commission recognizes the adaptation right as an individual competence, and therefore should have incorporated it separately in the Copyright Directive. An independent rule to assess transformative use would put conformity with the WIPO Copyright Treaty beyond doubt, and be similar to the approach taken in the Software and

⁶⁸ *Case 406/10, SAS Institute* in particular Para. 68 of the judgment.

⁶⁹ See Spoor, *supra* n. 61, p. 207.

⁷⁰ *Case 406/10, SAS Institute*, AMI 2012-4, No. 16, with case comment K.J. Koelman, p. 172; J. Becker, 'Harmonisatie van auteursrechtelijke exploitatiebegrippen door Europees Hof afgerond', available at: <http://www.boek9.nl/files/2012/Joost_Becker_-_Harmonisatie_van_auteursrechtelijk_exploitatie_door_Europees_Hof_Boek9.pdf>.

Database Directives. If the Court of Justice would temper its activism, the Commission could take into account the latest developments in multimedia works production, as well as the right to remuneration of the authors whose works have been transformed.

Multimedia works are transformative, as they build upon previous works by remodelling their intellectual form.⁷¹ This results in adaptations, for instance by means of sampling, which is to ‘incorporate portions of existing sound recordings, into a newly collaged composition’.⁷² The right to make adaptations is to be distinguished from the reproduction right (Section 3) and moral rights of the author.⁷³ With regard to the second distinction, moral rights also protect against unlawful modification. The adaptation right is however an economic right, like the exclusive reproduction right. The exercise hereof does not depend on the infliction of damage to the reputation of the author.

Despite the concern of rights holders over formal recognition of the integrity of their works, moral rights have not yet been harmonized (nineteenth consideration Copyright Directive).⁷⁴ As this does not relieve member states of the obligation to offer such protection, it was feared that national differences would continue to impede Union-wide exploitation of copyright works.⁷⁵ This danger is also present where consumers are granted compulsory licenses for transformative use.⁷⁶ Nevertheless, both the protection of moral rights and collective rights management were not regulated, for the reason that the subjects needed further consideration.⁷⁷

Stemming from the Collective Rights Management Directive, this subject has finally been given due consideration.⁷⁸ Be that as it may, at the time of the design of the Copyright Directive, the Commission already foresaw an important role for collecting societies to mediate between authors and creative consumers. By setting up ‘one stop shops’, national societies could combine repertoires. If all rights information was made centrally available on the European level, it would be easily accessible and contribute to lawful

⁷¹ See *supra* n. 10, p. 60.

⁷² Commission Document 95/382 final, pp. 25, 27; K. McLeod & P. DiCola, *Creative License: The Law and Culture of Digital Sampling*, Duke University Press, Durham, 2011, p. 1.

⁷³ Commission Document 95/382 final, pp. 44, 65; Commission Document 96/586 final, p. 27.

⁷⁴ See *cit. op. supra* n. 31.

⁷⁵ Commission Document 96/586 final, p. 28. In a broader context, namely to also ‘decriminalize file sharing’, is the granting of compulsory, blanket licenses most famously advocated by Lawrence Lessig: L. Lessig, *Remix. Making Art and Commerce Thrive in the Hybrid Economy*, Bloomsbury, London, 2008, p. 271.

⁷⁶ Commission Document 95/382 final, p. 77.

⁷⁷ Commission Document 97/628 final, p. 9.

⁷⁸ European Parliament and Council Directive 2014/26/EU of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (OJ 2014, L 84/72).

transformation of copyright works. However, the organization of alliances was left to the collecting societies, as was the licensing of the adaptation right, which remained subject to the permission of the original authors in accordance with national law.⁷⁹

The absence of an adaptation right in the Copyright Directive is understandable considering that the related subjects of moral rights and collective rights management were not harmonized either. As the Collective Rights Management Directive is now here, however, the time is ripe to reconsider moral rights and particularly the adaptation right. This need is further increased by the fact that the criteria for copyright protection have also been settled.⁸⁰

If the adoption of the adaptation right reappeared on the European agenda, it would be preferable for it to align with Article 12 Berne Convention (1971). Although there would still be some difficult theoretical hurdles, an explicit adaptation right has the advantage of certain compliance with Article 1(3)(4) WIPO Copyright Treaty.⁸¹ Furthermore, such an inclusion follows the distinction with the reproduction right made in the Software and Database Directives (Article 4(b) and 5(b) respectively). Lastly, a more reserved Court of Justice would provide an opportunity to review the changes undergone by the information society over nearly thirteen years. In this context, it might be interesting to try coping with the economic significance of multimedia works outside the field of copyright limitations (Article 5.7(1) of the experimental European Copyright Code).⁸²

Limitations are currently part of a restricted list (Article 5 Copyright Directive). They cannot therefore be expanded easily with an exception for transformative use.⁸³ Even if expansion was achieved, it is questionable if this would have the desired effect since the limitations are said only to restrict the scope of the

⁷⁹ Commission Document 95/382 final, p. 76, 78; *OJ* 1996, C 320/177.

⁸⁰ Van Eechoud *et al.*, *Harmonizing European Copyright Law. The Challenges of Better Lawmaking*, Kluwer Law International, Alphen aan den Rijn, 2009, p. 84; see *cit. op. supra* n. 50.

⁸¹ See *cit. op. supra* n. 55.

⁸² Available at: <<http://www.copyrightcode.eu/index.php?websiteid=1>>; see for an overall commentary: J.C. Ginsburg, 'European Copyright Code – Back to First Principles (with Some Additional Detail)', *Auteurs & Media*, No. 1, 2011, pp. 5-21.

⁸³ This however might not be necessary considering the nature of the quotation and parody exception (Article 5(3)(d)(k) Copyright Directive). On their origin, see: S. Ricketson, 'The Boundaries of Copyright: Its Proper Limitations and Exceptions: International Conventions and Treaties', *Intellectual Property Quarterly*, No. 1, 1999, pp. 64, 65; D. Mendis & M. Kretschmer, *The Treatment of Parodies under Copyright Law in Seven Jurisdictions. A Comparative Review of the Underlying Principles*, Intellectual Property Office, Newport, 2013, pp. 18-20.

reproduction right.⁸⁴ In conclusion, and in order to compensate losses brought by multimedia works to the financial interests of authors, their right to remuneration needs to be considered within the adaptation right itself. Whether this is actually possible, particularly from the premise that the Copyright Directive may not grant more restrictive rights than the Berne Convention (Article 1(1) WIPO Copyright Treaty), must be examined elsewhere.

At this stage, it can be observed that multimedia works should be treated as adaptations. The adaptation right, which is an economic right to be distinguished from the right of reproduction, has not been harmonized. The reason for this gap seems to be that moral rights and collective right management were not regulated.

With the Collective Rights Management Directive adopted, a consonant adaptation right should follow. This should take its cue from examples that are available in Treaty and Union law, but should also address the financial interplay between adaptations and original copyright works. In the last Section I will present the example of reggae music production in Jamaica in the 1970s, in order to illustrate the relevance of this interplay. Though this may sound distant from the omnipresence of ICT in the information society, such old-fashioned practices may still provide worthy insights to deal with transformative use today.⁸⁵

5. Lessons to Be Learnt from Versioning

In this section, I will use reggae music production to illustrate that a harmonious relation between adaptations and their underlying works can exist. By highlighting a famous song, I will show that popular music is very much indebted to reggae's tradition of versioning. Although at a certain point in reggae music legal interests grew in prominence, the previous relaxed attitude towards the making of derivative works proves that is worthwhile considering financial effects when the adaptation right is invoked.

In November 1992, the English band The Prodigy released their single Out of space.⁸⁶ As this song is arguably one of their biggest successes, you are probably familiar with its down tempo chorus, in where the singer sings about 'send him

⁸⁴ Guibault *et al.*, *Study on the Implementation and Effect in Member States' Laws of Directive 2001/29/EC on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society. Final Report*, IViR, Amsterdam, 2007, pp. 17, 18.

⁸⁵ See *cit. op. supra* n. 5.

⁸⁶ For more info see: <[http://en.wikipedia.org/wiki/Out_of_Space_\(song\)](http://en.wikipedia.org/wiki/Out_of_Space_(song))>.

to outer space; to find another race'. This person is actually the devil, and the singer is neither of the members of The Prodigy. Instead they sampled the lyrics and music of I Chase The Devil, a song performed by the singer Max Romeo and his band The Upsetters.⁸⁷ It was written by him and the artist Lee Perry, the latter who also produced the entire album War Ina Babylon. This was originally published in Jamaica by Federal Records.

Although sampling is by now a common phenomenon that recently gained attention again through the making of mash-ups, most people are not aware of the fact that re-use has been a fundamental aspect of reggae music production since the 1970s.⁸⁸ Briefly returning to the song I Chase The Devil; one year after War Ina Babylon was released in 1976, Lee Perry along with The Full Experiences came up with his own version, entitled Disco Devil.⁸⁹ From the beginning of the song, the original music is subjected to the effects of phase shifting and delay, and the lyrics are altered.

These practices of sound processing and singing new lyrics over an old rhythm, are called 'dubbing' and 'versioning'.⁹⁰ They are inextricably connected to Jamaica's sound system culture that centres around 'the dancehall'.⁹¹ Contrary to its association, the dancehall implies an open-air party where selectors play the latest versions. In order to draw crowds and allow them to get wholly absorbed, the music has to be loud and new records need to be produced fast.⁹² The importance of the recording studio, brought with it that copyright law enforcement was given a low priority.⁹³ Some commentators state that this de-emphasis was infused by an idea of collective authorship.⁹⁴ Given the vitality of the Jamaican music industry, this would prove copyright's economic incentive

⁸⁷ See: <<http://www.discogs.com/Max-Romeo-Upsetters-War-Ina-Babylon/release/3246158>>.

⁸⁸ See *cit. op. supra* n. 72; the best known know mash-up is probably that of the vocals of Jay-Z's The Black Album, and the music of The Beatles' The White Album by the artist Danger Mouse, see: <http://en.wikipedia.org/wiki/Danger_Mouse>. See for an economic approach towards the resulting The Grey Album: D. E. Bambauer, 'Faulty Math: The Economics of Legalizing the Grey Album', *Alabama Law Review* Vol. 59, No. 2, 2007, pp. 345-407.

⁸⁹ See: <<http://www.discogs.com/Lee-Perry-Full-Experiences-The-Bob-Marley-Wong-Chu-Disco-Devil-Keep-On-Mving/release/3311781>>.

⁹⁰ M.E. Veal, *Dub. Soundscapes and Shattered Songs in Jamaican Reggae*, Wesleyan University Press, Middletown, 2007, p. 63; P. Manuel & W. Marshall, 'The Riddim Method: Aesthetics, Practice, and Ownership in Jamaican Dancehall', *Popular Music*, Vol. 25, No. 3, 2006, pp. 447, 450.

⁹¹ Manuel & Marshall, *supra* n. 90, pp. 448, 449.

⁹² J.F. Henriques, 'Sonic Dominance and the Reggae Sound System Session', in M. Bull & L. Back (Eds.), *The Auditory Culture Reader*, Berg, Oxford, p. 457; Manuel & Marshall, *supra* n. 90, p. 449.

⁹³ Manuel & Marshall, *supra* n. 90 p. 463.

⁹⁴ J. Toynbee, 'Reggae Open Source: How the Absence of Copyright Enabled the Emergence of Popular Music in Jamaica', in L. Bently, J. Davis & J. Ginsberg (Eds.), *Copyright and Piracy. An Interdisciplinary Critique*, Cambridge University Press, Cambridge, 2010, pp. 359-363, 369; D. Howard, 'Copyright and the Music Business in Jamaica-Protection for Whom?', *Revista Brasileira do Caribe*, Vol. 9, No. 18, 2009, p. 512.

theory to be superseded. On the other hand, this notion is considered an exaggeration. Rather than being sympathetic, producers such as Lee Perry, who is regarded the right holder to the songs recorded at his Black Ark Studio, were far from tolerant of the re-use by others.⁹⁵ They have therefore embraced Jamaica's adoption of the Berne Convention, TRIPS Agreement and WIPO Copyright Treaty.⁹⁶

Given the divergent views on the importance of copyright law in Jamaica, it seems realistic to adopt a middle course. Even then, the flourishing of reggae music production makes an interesting example with which to evaluate copyright claims.⁹⁷ With regard to the right of adaptation, it is a pressing concern to ascertain whether the economic effects of derivative works can be grasped, as the limitations that apply to the reproduction right cannot be expanded to outweigh this factor.⁹⁸

Pop music production methods have come to resemble those of reggae. Given this, current right holders should also learn from the way in which adaptations were treated up to a certain point. When these lead to financial gain, the consequences for the original works should be considered. If such initiative is not taken by industry itself, European copyright law might need to enforce it. Although it has yet to be examined when the threshold should be met, the adaptation right would provide a suitable opportunity to prevent the information society from cultural deprivation.

6. Conclusion

After more than ten years of the Copyright Directive, an interim conclusion can be drawn. In essence, it is all about missed opportunities and trying to make the best of what is at hand. Concerning the missed opportunities, the European Parliament and Council could have adopted an explicit adaptation right. This would have made sense from the perspective of international copyright law and their previous legislative actions. Probably influenced by the sensitive nature of

⁹⁵ J. Okpaluba, 'Free-Riding on the Riddim'? Open Source, Copyright Law and Reggae Music in Jamaica', in L. Bently, J. Davis & J. Ginsberg (Eds.), *Copyright and Piracy. An Interdisciplinary Critique*, Cambridge University Press, Cambridge, 2010, pp. 380, 385; Manuel & Marshall, *supra* n. 90, p. 466.

⁹⁶ See: <http://www.wipo.int/treaties/en/ShowResults.jsp?country_id=85C>;

<http://www.wto.org/english/thewto_e/countries_e/jamaica_e.htm>.

⁹⁷ L. Mann, 'Decolonizing Networked Technology: Learning from the Street Dance', in S.A. Pager & A. Candeub (Eds.), *Transnational Culture In The Internet Age*, Edward Elgar Publishing, Cheltenham, 2012, pp. 288, 289.

⁹⁸ See *cit. op. supra*, n. 84.

the right and the confidence in national collective rights management, only the reproduction right was retained. By so doing, the Commission lost sight of all the distinctive features of multimedia works.

Since then, it has been up to the Court of Justice to make the best of what is available. While the court seems to have succeeded in repairing the gap left in the Copyright Directive, the opportunity of adding a modern adaptation right should not be overlooked. In order to develop ideas on which form the right should take, policy makers and private actors should draw inspiration from reggae culture, which the information society has come to resemble.